IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4520 of 2007()

CRA.194/2006 of II ADDL. SESSIONS COURT, PALAKKAD
ST.2203/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD

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REVN. PETITIONER: APPELLANT/ACCUSED:

P.MURALI, S/O.VELAYUDHAN NAIR,
THUSHARAM, PIRAYIRI, PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS: R1 AND R2

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1. JAYAKUMAR, M/S.HOMEFIT LEASING LTD.,
VCM COMPLEX, OLAVAKKODE, PALAKKAD, REP. BY
FIELD OFFICER, M.MANIKANDAN.

2. STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 4520 of 2007

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Dated: 18-12-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No. 2203 of 2004 on the file of the J.F.C.M-II, Palakkad challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts

below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Since the cheque amount was produced in the form of demand draft by the first respondent/complainant, the trial court imposed a sentence of simple imprisonment for one month. Taking note of the payment, the lower appellate court has reduced the sentence to simple imprisonment for one day (24 hours). In as much as the cheque amount was produced in the form of Demand Draft before the trial court itself, I am of the view that the sentence need only be one of imprisonment till rising of the court for which purpose the revision petitioner shall appear before the trial court on 7-1-2008.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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